

# Notice of Allowability

Application No.

09/843,676

Examiner

Malgorzata A. Walicka

Applicant(s)

CECH ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment 05/07/04.
2. ☒ The allowed claim(s) is/are 21-40.
3. ☒ The drawings filed on 03 May 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 10/08/03, 01/20/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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Amendment filed on May 7, 2004, substitute specification, formal drawing and a copy of certificate of deposit of lambda phage  $\lambda$ 25-1.1 (ATCC 209024) filed on May 3, 2004 are acknowledged. Amendments to the claims and the title have been entered. Claims 1-20 were previously canceled; claims 21, 22, 25, 26, 27, 29, 30, 31 have been amended. New claims 33-40 are added. Claims 21-40 are pending and are the subject of this Office Action.

The terminal disclaimer filed on June 2, 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of the US Patent No. 6,261,836 B1 has been reviewed and is accepted. The terminal disclaimer has been recorded.

## **DETAILED ACTION**

### **1. Restriction/election**

Claim 21-26, 29-30 and 33-40 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claim 27-28 and 31-32, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claim 27-28 and 31-32 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in the Office action mailed on 11/25/2003 is hereby withdrawn.

## **2. Objections**

### *2.1. Specification*

Objection to the specification is withdrawn, because the substitute specification has been filed.

## **3. Rejections**

### *3.1. 35 USC, section 112, first paragraph*

#### *3.1.1. Lack of written description*

Rejection of claims 21-26 and 29-30 made in the previous Office Action is withdrawn, because the claims have been amended.

#### *3.1.2. Scope of enablement*

Rejection of claims 21-26 and 29-30 made in the previous Office Action is withdrawn, because the claims have been amended.

### *3.2. Nonstatutory Double Patenting*

Claim 21-22, 24-26 and 29-30 were rejected in the previous office Action as being unpatentable over claim 1 of U.S. Patent No. 6,261,836 B1. The terminal disclaimer filed on June 2, 2004 has overcome this rejection.

In addition, claims 21-22, 24-26 and 29-30 were provisionally rejected in the previous Office Action under the judicially created doctrine of obviousness-type double

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patenting as being unpatentable over claim 1 of copending applications No. 09/766,253 and No. 09/438,486. This rejection is now withdrawn because Applicants canceled claim 1 in both applications.

Furthermore, claims 21-26 and 29-30 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-3, 6-8 and 10 of copending Application No. 10/044,692. This rejection is now withdrawn, because the USSN 10/044, 692 has not been thus far examined and the present application is now being allowed.

#### **4. Examiner's amendment**

In claim 32, please replace -27-- with -31--.

Authorization for this amendment correcting an obvious typographical error was given by Applicants' representative Michael Schiff on July 7, 2004.

#### **5. Allowance**

Claims 21-40 are allowed. The following is the examiner's reason for allowance. Applicants disclose immunogenic polypeptides useful in production of anti-human telomerase reverse transcriptase specific antibodies. The antibodies are of use in diagnosis of abnormal expression of telomerase in diseases such as cancer and aging related syndromes. No prior art teaches or fairly suggest the invention, because the inventors are the first to disclose SEQ ID NO: 225, the sequence of human telomerase reverse transcriptase.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

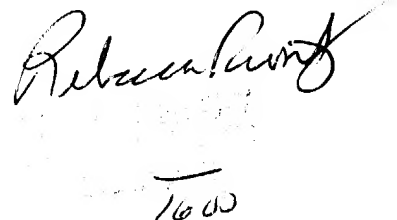
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malgorzata A. Walicka, Ph.D., whose telephone number is (571) 272-0944 and the right fax number is (571) 273-0944. The examiner can normally be reached Monday-Friday from 10:00 a.m. to 4:30 p.m. EST.

If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D. can be reached on (571) 272-0928. The fax phone number for this Group is (571) 273-0937.

Malgorzata A. Walicka, Ph.D.

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Patent Examiner

A handwritten signature in black ink, appearing to read "Malgorzata A. Walicka", is written over a circular official stamp. The stamp contains some illegible text and a date "16 03".